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Nos. 85-621 and 85-642

Supreme Court, U.S.

FILED

JAN 24 1986

JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

COMMODITY FUTURES TRADING COMMISSION, PETITIONER

v.

WILLIAM T. SCHOR, ET AL.

CONTI COMMODITY SERVICES, INC., PETITIONER

v.

WILLIAM T. SCHOR, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI IN NO. 85-621
FILED OCTOBER 11, 1985

PETITION FOR A WRIT OF CERTIORARI IN NO. 85-642
FILED OCTOBER 16, 1985

CERTIORARI GRANTED DECEMBER 9, 1985

40pt

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 83-1703

WILLIAM T. SCHOR, PETITIONER

v.

COMMODITY FUTURES TRADING COMMISSION

AND

CONTI COMMODITY SERVICES, INC.

AND

RICHARD L. SANDOR, RESPONDENTS

No. 83-1704

MORTGAGE SERVICES OF AMERICA, PETITIONER

v.

COMMODITY FUTURES TRADING COMMISSION,

AND

CONTI COMMODITY SERVICES, INC.

AND

RICHARD L. SANDOR, RESPONDENTS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
(T)06-28-83	4-Petitioner's petition for review of an order of the CFTC (m-27)
(T)06-28-83	Certified copy of petition for review was mailed to CFTC
(J)07-07-83	4-Petitioner's emergency motion for relief from requirement of posting of bond or, in the alternative, for reduction of bond (m-7)
(J)07-07-83	4-Petitioner's memorandum of points and authorities in support of emergency motion (m-7)
(B)07-11-83	Clerk's order, sua sponte, that these cases (Nos. 83-1703 & 83-1704) are hereby consolidated

- (J)07-11-83 4-Respondent's (Commodity Futures Trading Commission) response in opposition to petitioners' emergency motion for relief from requirement of posting bond or, in the alternative, for reduction of bond (m-11)
- (J)07-11-83 4-Respondent's (Conticommodity Services, Inc.) response in opposition to petitioners motion for relief with respect to bond (m-11)
- (C)07-12-83 Per Curiam order granting in part and denying in part petitioner's emergency motion for relief from requirement of posting bond or, in the alternative, for reduction of bond. Petitioner has challenged the applicability and constitutionality of the statutory double bond requirement. See 7 USC § 18(e). We recognize the significance of these issues, see *Saharoff v. Stone*, 638 F.2d 90 (9th Cir. 1980), and which [*sic*] to preserve the questions for full consideration on the merits. Accordingly, in view of respondent Conticommodity Services, Inc.'s representation that less than a double bond will adequately protect its interests, we grant petitioner's motion in part and set the bond at \$145,000 pending consideration of and any further action in this case by the merits panel. This order leaves it open to that panel to accord full consideration to all parties' arguments concerning the bond requirement, including its applicability in this case, its constitutionality, and the amount at which the bond should or must be set. Petitioner shall submit a

- bond in the amount of \$145,000 within the statutory time period as a prerequisite to maintaining this appeal. All other requested relief is denied: Wald, Mikva (who did not participate) and Ginsburg, CJs
- (C)07-14-83 4-Letter dated 7/13/83 from counsel for petitioner enclosing bond in amount of \$145,000 and requesting that the Clerk deposit this bond
- (C)07-14-83 Certified check #1783 dated 7/13/83 from counsel for petitioner—sent to Clerk 10:15 am 7/14/83 by Manager of Public Office (check is in amount of \$145,000)
- (W)07-14-83 Escrow account opened 7-14-83
- (B)08-08-83 CERTIFIED INDEX TO RECORD (n-4) (Vols. I, II & III)
- (V)08-23-83 Clerk's order that a briefing schedule is set as follows: Petitioner's brief and appendix—09/19/83; Respondents' brief—10/19/83; Petitioner's reply brief, if any—11/02/83. These cases 83-1703 and 83-1704 shall be included in the pool of cases for the January 1984 calendar—see order 9-16-83
- (J)09-09-83 4-Petitioner's motion to extend time to file brief and appendix to 10-19-83 (m-9)
- (V)09-16-83 Clerk's order that petitioners' motion for enlargement of time within which to file briefs and appendix is partially granted and the briefing schedule filed herein 08/23/83 is revised as follows: Petitioners' briefs and appendix—10/07/83; Respondents' brief—11/07/83; Petitioners' reply briefs—11/21/83. No further enlargement of time for filing petitioners' briefs will be granted by the

Clerk. The selection of these cases 83-1703 and 83-1704 for oral argument must be delayed. The Clerk shall now include these cases in the pool of cases for the February-March 1984 calendar

- (J)10-07-83 15-Petitioner's brief (m-7)
- (J)10-07-83 7-Petitioner's appendix (Vols. I & II) (m-7)
- (J)10-07-83 4-Petitioner's exhibits (Vols. I & II) (m-7)
- (J)10-28-83 4-Respondent's (Commodity Futures Trading Commission) motion to extend time to file brief to 11-23-83 (m-28)
- (V)11-08-83 Clerk's order that the motion to extend briefing time filed by respondent is granted and that the briefing schedule is revised as follows: Respondent's brief—11/23/83; Petitioner's reply brief—12/07/83. The Clerk shall retain the instant case in the pool of cases available for the Court's February 1984 calendar. No further extensions of time will be granted by the Clerk to any party herein
- (J)11-07-83 15-Respondent's (Conticommodity Services, Inc.) brief (m-4)
- (J)11-28-83 4-Respondent's (Commodity Futures Trading Commission) motion for leave to file motion to extend time to file brief (m-23)
- (V)11-29-83 Clerk's order granting request for leave to file a motion for extension of time for filing brief
- (V)11-29-83 4-Respondent's motion for extension of time to file brief until 11/25/83—per above order

- (V)11-29-83 15-Respondent's (Commodity Futures Trading Commission) brief (m-25)
- (J)12-07-83 15-Petitioner's reply brief (m-7)
- (V)03-15-84 Clerk's order, sua sponte, that the following times are allotted for oral argument Petitioner—30 minutes; Respondents—30 minutes
- (J)03-20-84 4-Letter from counsel for respondent (Commodity Futures Trading Commission) advising of additional authorities pursuant to FRAP 28(j) (m-19)
- (V)03-23-84 Clerk's Notice that Northern Pipeline Construction Co. v. Marathon Pipeline Construction Co., 102 S.Ct. 2858 (1982), held incompatible with article III bankruptcy court adjudication of state common law rights of action. The parties are instructed to address at the oral argument scheduled for March 26, 1984, the relevance of the Northern Pipeline decision to the Commission's authority to adjudicate counterclaims that are not based on violations of the Commodities Exchange Act or Commission regulations thereunder
- (V)03-26-84 ARGUED before Ginsburg, CJ, SCJ MacKinnon and USDC Judge Barrington D. Parker. The Court granted all parties leave to submit supplemental briefs on the Northern Pipeline issue in 10 days
- (B)04-05-84 15-Petitioner's supplemental brief (m-4)
- (J)04-06-84 4-Respondent's (Conticommodity Service, Inc.) motion for leave to file supplement brief time having expired (p-6)

- (J)04-06-84 4-Respondent's (Commodity Future[s] Trading Commission) motion for leave to file supplemental brief time having expired (m-6)
- (V)05-07-84 Per curiam order that respondent's motion for permission to file supplemental brief instant and of respondent's Conticommodity Services Inc. motion to file supplemental memorandum one day late are granted and the Clerk is directed to file the lodged supplemental brief and the lodged supplemental memorandum, and to enter same on the docket; Ginsburg, CJ, SCJ MacKinnon and USDC Judge Parker
- (V)05-07-84 15-Respondent's (Commission) supplemental brief (m-6)
- (V)05-07-84 15-Respondent's (Conticommodity Service) supplemental memorandum (p-4) (m-4)
- (D)08-10-84 Opinion for the Court filed by Circuit Judge Ginsburg.
- (D)08-10-84 Judgment by this Court that the order of the Commodity Futures Trading Commission under review herein is hereby affirmed in part, reversed in part, and these cases are remanded, all in accordance with the Opinion for the Court filed herein this date.
- (D)08-10-84 Mandate order.
- (J)09-24-84 15-Respondent's (ContiCommodity Services, Inc.) petition for rehearing and suggestion for rehearing en banc (m-21)
- (J)09-24-84 15-Respondent's (Commodity Futures Trading Commission) petition for rehearing and suggestion for rehearing en banc (m-24)

- (V)10-26-84 Per curiam order that the petitions for rehearing are denied; Ginsburg, CJ, SCJ MacKinnon and USDC Judge Parker
- (V)10-26-84 Per curiam order, en banc, that the suggestions for rehearing en banc are denied; CJ Robinson, Wright, Tamm, Wilkey, Wald, Mikva, Edwards, Ginsburg, Bork, Scalia and Starr, CJs (Circuit Judges Wald and Starr would grant the suggestions for rehearing en banc; (A statement of Circuit Judge Wald, concurred in by Circuit Judge Starr, is attached))
- (J)10-31-84 4-Respondent's (Commodity Futures Trading Commission) motion to stay issuance of mandate (m-31)
- (B)11-06-84 4-Petitioner's response in opposition to respondent's (Commodity Futures Trading Commission) motion to stay issuance of mandate (m-5)
- (V)11-20-84 Per curiam order that the motion to stay issuance of mandate is granted and the Clerk is directed to withhold issuance of this Court's mandate through 12/03/84; Ginsburg, CJ, SCJ MacKinnon and USDC Judge Parker
- (J)11-27-84 4-Respondent's (Commodity Futures Trading Commission) motion to stay issuance of mandate (m-27)
- (J)12-05-84 4-Petitioner's response in opposition to respondent's (Commodity Futures Trading Commission) motion for stay issuance of mandate
- (C)12-07-84 Per Curiam order that the Clerk is directed to withhold the issuance of this Court's mandate through Dec. 27, 1984; No fur-

ther stay for the purpose of preparing and filing a petition for certiorari shall be granted; Ginsburg, CJ; MacKinnon, SCJ and Parker, Dist. Judge, USDC for DC

- (J)12-07-84 4-Respondent's (ContiCommodity Services, Inc.) response in support of motion to stay issuance of the mandate (m-7)
- (J)12-26-84 4-Respondent's (ContiCommodity Services, Inc.) petition for maintenance of bond (m-21)
- (J)12-28-84 4-Petitioner's response in opposition to respondent's petition for maintenance of bond (m-27)
- (D)01-17-85 Mandate issued.
- (J)01-16-85 Copy of letter dated 01-14-85 from Clerk, Supreme Court extending time to file petition for writ of certiorari to 03-25-85
- (J)01-31-85 4-Petitioner's motion for refund of bond (m-30)
- (J)03-29-85 Notice from Clerk, Supreme Court that petition for writ of certiorari was filed 03-25-85 in SC No. 84-1500
- (T)04-04-85 Notice from Clerk, Supreme Court that a petition for writ of certiorari was filed in SC No. 84-1519 on March 25, 1985
- (R)04-30-85 Notice from Clerk, Supreme Court that a petition for writ of certiorari was filed in SC No. 84-1673 on April 22, 1985 [1]
- (R)06-19-85 Certified copy of order from Clerk, Supreme Court dated June 17, 1985 denying petition for writ of certiorari in SC No. 84-1673 [1]
- (T)07-03-85 Letter from Clerk, Supreme Court notifying that an order was entered on July 2, 1985 in SC No. 84-1519 granting the

petition for writ of certiorari and vacating this Court's judgment and remanding [1]

- (R)07-29-85 4-Respondent's notification of settlement discussions (m-24) [1]
- (R)08-05-85 Certified copy of order from Clerk, Supreme Court advising that the petition for writ of certiorari was granted in SC No. 84-1500 on July 2, 1985 [1]
- (R)08-05-85 Certified copy of order from Clerk, Supreme Court advising that the petition for writ of certiorari was granted in SC No. 84-1519 on July 2, 1985 [1]
- (R)08-05-85 Certified copy of order from Clerk, Supreme Court entered on July 2, 1985 in SC Nos. 84-1500 and 84-1519 vacating this Court's judgement and remanding [1]
- (C)08-13-85 Opinion Per Curiam (On remand from the Supreme Court)
- (C)08-13-85 Judgment reinstating the judgment of this Court.
- (C)08-13-85 Mandate order.
- (F)08-13-85 Per Curiam order that the request to hold this case in abeyance presented in counsel for ContiCommodity Services' letter dated July 24, 1985, and received July 29, 1985 is denied. At this juncture, the case has not become moot, we unquestionably have jurisdiction to act on the Supreme Court's remand, and we had already decided, prior to receipt of the letter request, on the appropriate disposition of the Supreme Court's remand, although our opinion, released today, had not yet issued. (See order for

citations) Ginsburg, CJ; MacKinnon, SCJ; and Parker, U.S. District Judge for the District of Columbia.

- (J)08-12-85 4-Letter dated 08-07-85 from counsel for respondent advising of action taken by Supreme Court
- (D)10-07-85 MANDATE ISSUED.
- (T)10-21-85 Notice from Clerk, Supreme Court that a petition for writ of certiorari was filed in SC No. 85-621 on 10/11/85 [1]
- (T)10-21-85 Notice from Clerk, Supreme Court that a petition for writ of certiorari was filed in SC No. 85-642 on 10/16/85 [1]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

No. 80 C 1089

CONTI COMMODITY SERVICES, INC., PLAINTIFF,

v.

MORTGAGE SERVICES OF AMERICA, INC., AND
WILLIAM T. SCHOR, DEFENDANTS.

MOTION TO DISMISS OR TO STAY

NOW COME Defendants, Mortgage Services of America, Inc. and William T. Schor, by their attorneys, and move this Court to dismiss or stay this cause for the following reasons:

1. The parties have entered into a binding agreement requiring that the controversy which is the subject matter of this action be settled by arbitration.
2. There is a prior case pending before the Commodity Futures Trading Commission ("CFTC") between the same parties and involving the same transactions and controversies which are the subject of this action.

Arbitration Clause

1. The plaintiff in this action has entered into written agreements with both of the defendants, copies of which are attached to the Complaint, which govern the relationship between the parties in connection with the commodity accounts maintained with plaintiff by defendants.
2. Paragraph 8 of each of those agreements provide as follows:

"Any controversy between you and me arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the rules then obtaining, of the American Arbitration Association or the Arbitration Committee of any Exchange on which any order involved therein may have been executed or in which you shall have the benefit of membership. Arbitration must be commenced within one year after the cause of action has accrued by service upon the other of a written demand for arbitration, naming therein the arbitration tribunal."

3. In this action, the plaintiff seeks to recover amounts allegedly due from the defendants in connection with commodity transactions in which the plaintiff acted as broker. This action is plainly a "controversy" between plaintiff and defendants "arising out of or relating to" the Customer's Agreements. The controversy is, therefore, subject to the arbitration clause of the Customer's Agreements.

4. Plaintiff has failed to request or demand arbitration as required in the Customer's Agreements but is bound by such Agreement to settle the controversy which is the subject of this action by arbitration.

Prior Pending Cause

1. On February 21, 1980 defendant Schor and defendant Mortgage Services of America, Inc. both instituted reparations proceedings before the CFTC against plaintiff for damages and losses arising out of commodity futures transactions in which plaintiff acted as broker. True and correct copies of the reparations complaints are attached hereto as Exhibits A and B.

2. The transactions which are the subject matter of the reparations complaints are the same transactions which are the subject matter of the Complaint in this cause—Commodity Futures transactions in which plaintiff acted as broker for defendants.

3. Pursuant to the Rules of the CFTC, plaintiff may pursue its purported claim against the defendant for balances allegedly due by filing a counterclaim in the reparations proceedings. No such counterclaim has been filed by the plaintiff.

4. The reparations proceedings are prior pending causes and will fully and completely resolve and adjudicate all of the rights of the parties to this action with respect to the transactions which are the subject matter of this action.

5. This action is merely duplicative of the prior filed reparations proceedings and to permit the continuation of this action would be a waste of judicial effort and an undue burden on the litigants.

6. The continuation of this action, in light of the prior filed reparations proceedings, would be unjust to defendants in that it would require them, at a great cost and expense, to litigate the same issues in two forums. If this action proceeds, defendants will be required pursuant to Rule 13 (a) of the Federal Rules of Civil Procedure to file a counterclaim in this action setting forth all of the claims that they have already filed before the CFTC. The effect would be to emasculate if not destroy the purposes of the Commodity Exchange Act to provide an efficient and relatively inexpensive forum for the resolution of disputes in futures trading.

For the foregoing reasons, defendants respectively move this Court to dismiss this cause or, in the alternative, to stay this cause pending the outcome of a proper arbitration or of the prior filed reparations proceedings.

Stephen M. Merrick

Jerome A. Tatar
Attorneys for defendants

Of Counsel:
Fishman, Merrick, & Perlman, P.C.
30 North La Salle Street
Chicago, Illinois 60602
312-726-1224
[April 18, 1980]

11/16/73
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable John Powers Crowley

Cause No. 80 C 1089

Date June 23, 1980

Title of Cause

CONTICOMMODITY SERVICES, INC. v. MORTGAGE SERVICES OF

AMERICA, INC., et al.

Brief Statement
of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of an order and the names and addresses of their attorneys. Please do this in a separate list below (separate lists may be appended).

Names and
Addresses of
moving counsel

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent.

Defendants' motion to stay or dismiss is denied.

Shearson, Hayden Stone, Inc. v. Lumber Merchants Inc.

423 F. Supp. 559 (S.D. Fla. 1976). Defendants are
ordered to answer within 15 days. Within 30 days c

Reserve space below for notations by minute clerk

date of this order the parties are ordered to exchange
lists of all persons who have knowledge of the facts
leged in the pleadings. The parties are also ordered
exchange all relevant documents within their custody
control at 10:00 a.m.

The cause is set for a report on status on August
1980.

15

DOCKETED

JUN 24 1980

EXHIBIT B

Name of Presiding Judge, Honorable : John POWERS CROWLEY

Cause No. ... 89 C 1089

Date July 31, 1980

Title of Cause

CONTICOMMODITY SERVICES, INC. v. MORTGAGE SERVICES OF AMERICA, INC. and WILLIAM T. SCHOR

Brief Statement of Motion

Motion for Reconsideration and for Extension of Time to Answer or Otherwise Respond

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Stephen M. Merrick
FISHMAN MERRICK & PERLMAN, P.C.
30 North LaSalle Street, Suite 3600
Chicago, Illinois 60602
Attorneys for Defendants

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Robert L. Byman
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
Attorneys for Plaintiff

JUL 9 1980

Reserve space below for notations by minute clerk

Hearing on defendants' motion for reconsideration held.

For the reasons stated in open court, the motion is denied.
Defendants given to July 31, 1980 to answer the complaint.
Parties are to exchange list of witnesses and all relevant documents in their possession or under their control by August 30, 1980. Status hearing reset to September 26, 1980 at 10:00 a.m.

Hand this memorandum to the Clerk.

Counsel to fill in address to which the Court until motion has been called.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

No. 80 C 1089

CONTICOMMODITY SERVICES, INC. PLAINTIFF,

v.

MORTGAGE SERVICES OF AMERICA, INC., AND
WILLIAM T. SCHOR, DEFENDANTS.

MOTION TO DISMISS OR TO STAY

NOW COME Defendants, Mortgage Services of America, Inc. and William T. Schor, by their attorneys, and move this Court for an order dismissing or staying this action by reason of the existence of prior pending actions between the same parties and involving the same claims before the Commodity Trading Commission ("CFTC"). By this motion, defendants renew a motion previously filed with this Court for the reason that there has been a substantial change in circumstances since the previous motion was filed. In support of this motion, defendants state as follows:

1. On April 10, 1980, defendants filed a Motion to Dismiss or Stay this cause on the basis that there were prior causes of action pending before the CFTC involving the same parties and subject matter as are involved in the action before this Court. Copies of the reparations complaints filed before the CFTC are attached to the April 10 Motion to Dismiss or Stay.

2. At the time that defendants filed their Motion to Dismiss or Stay on April 10, 1980, the status of the pleadings in this action and the CFTC action were as follows:

(a) In this action, the only pleading filed was a complaint by plaintiff, ContiCommodity Services, Inc. ("Conti") against Mortgage Services of America, Inc. ("MSA") and William T. Schor ("Schor") claiming that MSA and Schor were indebted to Conti in connection with certain commodity futures transactions in which Conti had acted as broker for MSA and Schor.

(b) There were two proceedings which had been commenced before the CFTC, both reparations claims by MSA and Schor, respectively, against Conti charging violations of the Commodity Exchange Act in connection with the same commodity futures transactions which are the subject of Conti's action in this Court against MSA and Schor.

3. By order dated June 24, 1980 this Court denied defendants' April 10 Motion to Dismiss or Stay and later denied defendants' Motion for Reconsideration. At the hearing on defendants' Motion for Reconsideration, the Court indicated that one of the considerations of the Court in denying the Motion to Dismiss or Stay was that the CFTC actions did not necessarily involve the same claims as those pending before this Court.

4. Since the Court's rulings, Conti has filed pleadings in the CFTC reparations proceedings which defendants believe may be of significance to the Court in its consideration of the question whether this action should be stayed or dismissed. In July, 1980, Conti filed an Answer and Counterclaim in the two CFTC proceedings by MSA and Schor against Conti, copies of which are attached as Exhibits A and B. In addition, Conti filed a Motion to Dismiss the CFTC reparations proceedings by both Schor and MSA; a copy of that motion is attached as Exhibit C.

In the event that this Motion is denied, defendants expect to file a counterclaim against Conti in substantially the form attached as Exhibit D.

5. The reason of the foregoing, is apparent that the identical claims are now before this Court and the CFTC. In its Counterclaims filed against Schor and MSA in the CFTC proceedings, Conti has asserted the same claims as it asserts in its complaint before the Court. Unless this action is stayed or dismissed, the claims which Schor and MSA has made in their reparations proceedings before the CFTC will have to be made by way of defense and counterclaim in this action. There will, therefore, be complete duplication in the two forums.

6. Conti has now requested that the CFTC dismiss the reparations proceedings filed by Schor and MSA because of the pendency of the action before this Court. Even though this action was filed after the reparations proceedings, Conti is now claiming before the CFTC that the same claims are pending in both proceedings, that the claims can be fully resolved before this Court and that, therefore, the reparations proceedings should be dismissed. The implications of this Motion by Conti are of great significance to the regulatory framework under the Commodity Exchange Act. If that motion is granted and this Court takes no action, the result would be that parties have an absolute right to force all controversies under the Commodity Exchange Act out of reparations and into the federal courts.

7. For the foregoing reasons, defendants renew their Motion to Dismiss or Stay this action.

Stephen M. Merrick
One of the Attorneys for
Defendants Mortgage Services
of America, Inc. and William
T. Schor

Of Counsel;
Fishman Merrick & Perlman, P.C.
30 North LaSalle Street
Suite 3600
Chicago, Illinois 60603
726-1224
[July 31, 1980]

BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

Docket No. 80-R567

WILLIAM T. SCHOR, COMPLAINANT,

v.

CONTICOMMODITY SERVICES, INC., AND
RICHARD L. SANDOR, RESPONDENTS.

MOTION FOR DEFAULT, FINDINGS AND
REPARATION AWARD

Pursuant to 7 U.S.C.A. § 18(e) and 17 C.F.R. § 12.26(a), the above complainant hereby respectfully moves:

(a) for entry of an Order declaring the above respondents to be in default for failure to file an answer to the complaint in the above-captioned reparation proceeding within the time prescribed;

(b) that a formal adjudicatory proceeding instituted in accordance with 17 C.F.R. § 12.31;

(c) that a Presiding Officer be appointed in accordance with 17 C.F.R. § 12.42;

(d) that the Presiding Officer enter findings and conclusions concerning the questions of violation and damages and enter a reparation award as prayed for in the complaint filed herein. In support of these Motions complaint encloses the filing fee as required in 17 C.F.R. § 12.27 and further states:

1. The complaint in these proceedings was mailed on or about February 18, 1980 and received by the Reparation Unit of the Commodity Futures Trading Commission ("the Commission") on February 21, 1980.

2. On May 7, 1980 the Reparation Unit of the Commission forwarded the complaint herein to the respondents.

3. At the request of counsel for respondent, Conticommodity Services, Inc. ("Conti"), complainant twice agree with said respondent that its time to answer the complaint could be extended from June 21, 1980 ultimately to July 11, 1980.

4. On or about July 10, 1980 counsel for Conti made a third request to counsel for complainant that complainant agreed to a further extension of time in which to respond to complainant's complaint herein and that complainant agree to withdraw its complaint herein and litigate the issues raised herein as a counterclaim in a lawsuit brought after the complaint herein was filed by Conti against complainant in the Federal District Court for the Northern District of Illinois. Complainant refused to agree to such extension and refused to substitute a counterclaim in Conti's subsequent lawsuit for its complaint herein. By letter dated July 10, 1980, a true and correct copy of which is attached hereto as Exhibit "A," complainant advised the Commodity Futures Trading Commission of such refusal to agree to a further extension and the reasons therefor.

5. The Commodity Futures Trading Commission should not permit an untimely answer to complainant's complaint because:

(a) it will delay these proceedings to the prejudice of complainant thus enabling respondents to defeat complainant's right to an inexpensive reparations proceeding by forcing complainant to assert and litigate the claim stated in these proceedings against Conti in a compulsory counterclaim in the subsequent federal court action brought by Conti against complainant;

(b) it will force complainant to litigate the issues raised herein both before the Commission and in the later federal court action brought by Conti since even if those issues are fully litigated in the federal court action on a counterclaim against Conti, respondent Sandor is not a party to that litigation.

(c) it will enable respondent Conti to defeat the intent of the Congress in establishing an inexpensive reparations procedure by the simple expedient of later filing suit against the complainant.

(d) the respondents have no valid reason or excuse for their failure to answer in a timely fashion.

(e) the complainant is entitled to reparations.

(f) Respondent Conti was in default as of July 11, 1980 and respondent Sandor was in default as of June 21, 1980.

WHEREFORE complainant requests that the Commission grant the foregoing motions.

WILLIAM T. SCHOR

By: _____
LESLIE J. CARSON, JR.
Attorney for Complainant
1442 Fidelity Building
123 South Broad Street
Philadelphia, Pa. 19109

[July 24, 1980]

Exhibit A

LESLIE J. CARSON, JR.
 ATTORNEY AT LAW
 1442 FIDELITY BUILDING
 123 SOUTH BROAD STREET
 PHILADELPHIA, PENNSYLVANIA 19109

(215) 735-1868

July 10, 1980

Commodity Futures Trading Commission
 2033 K Street, N.W.
 Washington, D. C. 20581

Attention:
 Margaret R. Sandridge
 Director, Complaints Section

Re:
 Mortgage Services of America and William
 T. Schor vs. ContiCommodity Services,
 Inc. (80-R566)

Gentlemen:

Please be advised that counsel for ContiCommodity Services, Inc., has requested and I have refused to agree to a further extension of time in which to answer in the above matter.

The reasons for not agreeing to any further extension are as follows:

1. This is the third request for an extension.
2. After the above claim was filed with the reparations unit, ContiCommodity Services, Inc., filed a suit in the Federal District Court for the Northern District of Illinois

thereby attempting to oust the CFTC of jurisdiction to resolve the issues raised by my clients, Mortgage Services of America and William T. Schor.

3. Any further delay will prejudice my clients since ContiCommodity Services, Inc., has advised that the case in Illinois will move ahead very quickly and any delay in the CFTC proceedings may result in a CFTC decision being delayed until after the Federal Court decision, even though the CFTC reparations complaint was filed long before that in the Federal District Court.

4. The result of the filing of the Federal District Court action by ContiCommodity Services, Inc., may be to deprive my clients of the inexpensive and expeditious resolution of their complaints intended by Congress in the Commodity Futures Trading Commission action.

Very truly yours,

LESLIE J. CARSON, JR.

LJC/pt
 cc: John K. Eggers
 William T. Schor
 Stephen M. Merrick

BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

Docket No. 80-R567

WILLIAM T. SCHOR, COMPLAINANT,

v.

CONTICOMMODITY SERVICES, INC., AND
RICHARD L. SANDOR, RESPONDENTS.

COMPLAINANT'S MOTION THAT PREVIOUSLY FILED MOTION FOR DEFAULT, FINDINGS AND REPARATION AWARD BE GRANTED AS MADE

Pursuant to 7 U.S.C.A. § 18(e) and 17 C.F.R. § 12.26(a), the above Complainant hereby respectfully moves that the Motion for Default, Findings and Reparation Award previously filed by Complainant be granted and in support thereof avers the following:

1. The aforesaid Motion filed and served on respondents by mail on July 24, 1980. True and correct copies of said Motion, with the letter transmitting it to the Complaints Division and the check submitted therewith are attached hereto as Exhibit I.

2. The averments and requests for relief contained in the attached Motion for Default are incorporated herein and reiterated in this Motion.

3. No answer by Respondents to said Motion for Default has been filed and as required by 17 C.F.R. § 12.46 Respondent registrants must be deemed to have consented to the relief sought by the Motion.

4. The Answer and Counterclaim untimely filed by Respondents must be stricken as null and void pursuant to 17 C.F.R. § 12.26.

5. On August 7, 1980 the Director of the Complaint Sections, Margaret R. Sandridge responded to the Motion for Default, Findings and Reparation Award as reproduced in Exhibit II hereto, advising, inter alia, that notice would be given shortly as to whether the facts warrant an adjudicatory hearing.

6. On September 11 and 22, 1980 the Commodity Futures Trading Commission notified, as reproduced in Exhibits III and IV hereto, Complainant that the case has been forwarded to the Office of Hearings and Appeals for the institution of formal adjudicatory and requested that the filing fee be forwarded.

7. On September 18, 1980 the filing fee requested was forwarded by Complainant as set forth in the letter of transmittal reproduced as Exhibit V hereto.

8. The Complaint herein was filed and received by the Reparations Unit on February 21, 1980 but on March 4, 1980 Registrant, Conticommodity Services, Inc., filed a lawsuit against Complainant based on the transactions which are the subject matter of the Complaint for Reparations. Said lawsuit was filed in the Federal District court for the Northern District of Illinois.

9. The Complainant herein has moved for dismissal and for stay of the proceedings in the Federal District Court pending decision in the instant reparations proceeding but the Federal District Court has denied those motions.

10. The Counterclaim attempted to be filed by the Registrants in this reparations proceeding is identical in substance to the Complaint filed by the Registrant, Conticommodity Services, Inc. in the Federal Court.

11. Permitting Registrants to file untimely their Answer and Counterclaim, particularly when coupled with the commencement of a lawsuit by one Registrant against Complainant after the filing of this Reparations pro-

ceeding, will prejudice Complainant and may deprive Complainant of the right to an adjudication in the reparations forum.

WHEREFORE Complainant renews its Motion for Default, Findings and Reparation Award and Respectfully Requests that it be granted promptly to preserve Complainant's rights herein.

WILLIAM T. SCHOR

By: _____
LESLIE J. CARSON, JR.
Attorney for Complainant
6378 Lancaster Avenue
Philadelphia, Pennsylvania 19151

[November 6, 1980]

BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

[Docket No. 80-R566]

MORTGAGE SERVICES OF AMERICA, INC., COMPLAINANT,

v.

CONTICOMMODITY SERVICES, INC., AND
RICHARD L. SANDOR, RESPONDENTS.

ANSWER TO COMPLAINT AND COUNTERCLAIM

Respondents, ContiCommodity Services, Inc. ("Conti") and Richard L. Sandor ("Sandor") answer the complaint filed with the Commission on February 15, 1980 by Mortgage Services of America, Inc. ("Mortgage Services") as follows:

* * * * *

COUNTERCLAIM

As its counterclaim against Mortgage Services, Conti states as follows:

1. On or about September 2, 1976, Mortgage Services and Conti entered into a customer's agreement (a copy of which is attached to Mortgage Services' complaint), pursuant to which Conti opened an account on behalf of Mortgage Services and began the execution of Mortgage Services' orders on various commodities exchanges pursuant to Mortgage Services' instructions.

2. On or about October 9, 1979, Mortgage Services' account went into deficit and Mortgage Services had failed to and refused to meet margin calls.

3. Pursuant to the customer's agreement, Conti liquidated Mortgage Services' positions, resulting in a deficit balance in the account of \$55,955.60.

Wherefore, Conti prays for entry of an order against Mortgage Services in the amount of \$55,955.60, together with interest, costs and reasonable attorneys' fees, and for such other and further relief as may be just.

CONTICOMMODITY SERVICES, INC.
AND RICHARD L. SANDOR

By: _____
One of their attorneys

Robert L. Byman
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

[July 17, 1980]

BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

[Docket No. 80-R567]

WILLIAM T. SCHOR, COMPLAINANT,

v.

CONTICOMMODITY SERVICES, INC., AND
RICHARD L. SANDOR, RESPONDENTS.

ANSWER TO COMPLAINT AND COUNTERCLAIM

Respondents, ContiCommodity Services, Inc. ("Conti") and Richard L. Sandor ("Sandor") answer the complaint filed with the Commission on February 15, 1980 by Mortgage Services of America, Inc. ("Mortgage Services") as follows:

* * * * *

COUNTERCLAIM

As its counterclaim against Schor, Conti states as follows:

1. On or about September 2, 1976, Schor and Conti entered into a customer's agreement (a copy of which is attached to Schor's complaint), pursuant to which Conti opened an account on behalf of Schor and began the execution of Schor's orders on various commodities exchanges pursuant to Schor's instructions.
2. On or about October 9, 1979, Schor's account went into deficit and Schor failed to and refused to meet margin calls.
3. Pursuant to the customer's agreement, Conti liquidated Schor's positions, resulting in a deficit balance in Schor's account of \$36,393.77.

WHEREFORE, Conti prays for entry of an order against Schor in the amount of \$36,393.77, together with interest, costs and reasonable attorneys' fees, and for such other and further relief as may be just.

CONTICOMMODITY SERVICES, INC.
AND RICHARD L. SANDOR

By: _____
One of their attorneys

Robert L. Byman
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

[July 17, 1980]

BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

Docket No. 80-R566

MORTGAGE SERVICES OF AMERICA, INC., COMPLAINANT,

v.

CONTICOMMODITY SERVICES, INC., AND
RICHARD L. SANDOR, RESPONDENTS.

REPLY TO COUNTERCLAIM

1. Admitted.

2. Denied. On the contrary, as indicated by the monthly statement of Conticommodity Services, Inc. (CONTI) for Mortgage Services of America (MSA) for the month ending October 31, 1979, the account of MSA was not in deficit but had a credit balance on October 9, 1979 of \$141,372.20 which rose on October 10, 1979 to \$156,697.20. All transactions after October 10, 1979 were executed by CONTI and Richard L. Sandor (Sandor) without authority from MSA. Failure to execute the orders which MSA tried to place with CONTI and Sandor on October 8, 1979 as averred in MSA's complaint herein, together with the unauthorized trades made after October 9, 1979, were the cause of all deficits and losses suffered by MSA in said account. Moreover, on October 9, 1979, there were no outstanding unmet margin calls addressed to MSA by CONTI.

3. Denied as stated. It is admitted that CONTI liquidated MSA's position, but it is denied that such liquidation was pursuant to the customer's agreement. On the

contrary, such liquidation was in violation of CONTI's and SANDOR's duties to MSA as a customer. It is denied that there is a deficit balance in MSA's account. On the contrary, the balance in the account as of December 3, 1979 was zero, as set forth in the CONTI statement of MSA's account for the month ending December 31, 1979 which is attached to the Complaint filed herein.

WHEREFORE MSA prays that the counterclaim of CONTI be denied and renews its prayer in the Complaint filed herein.

MORTGAGE SERVICES OF AMERICA,
INC.

By: _____
WILLIAM T. SCHOR
President

Attorney: LESLIE J. CARSON, JR.
1442 Fidelity Building
123 S. Broad Street
Philadelphia, Pa. 19109
(215) 735-4868

[August 14, 1980]

BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

Docket No. 80-R567

WILLIAM T. SCHOR, COMPLAINANT

v.

CONTICOMMODITY SERVICES, INC., AND
RICHARD L. SANDOR, RESPONDENTS

REPLY TO COUNTERCLAIM

1. Admitted.

2. Denied. On the contrary, as indicated by the monthly statement of Conticommodity Services, Inc. (CONTI) for William T. Schor (SCHOR) for the month ending October 31, 1979, the account of SCHOR was not in deficit but had a credit balance on October 9, 1979 of \$126,025.68. All transactions after October 9, 1979 were executed by CONTI and Richard L. Sandor (SANDOR) without authority from SCHOR. Failure to execute the orders which SCHOR tried to place with CONTI and SANDOR on October 8, 1979 as averred in SCHOR's Complaint herein, together with the unauthorized trades made after October 9, 1979, were the cause of all deficits and losses suffered by SCHOR in said account. Moreover, on October 9, 1979, there were no outstanding unmet margin calls addressed to SCHOR by CONTI.

3. Denied as stated. It is admitted that CONTI liquidated SCHOR's position, but it is denied that such liquidation was pursuant to the customer's agreement. On the contrary, such liquidation was in violation of CONTI's and SANDOR's duties to SCHOR as a customer.

WHEREFORE SCHOR prays that the counterclaim of CONTI be denied and renews his prayer in the Complaint filed herein.

WILLIAM T. SCHOR

Attorney: LESLIE J. CARSON, JR.
 1442 Fidelity Building
 123 South Broad Street
 Philadelphia, Pa. 19109
 (215) 735-4868

[August 14, 1980]

UNITED STATES OF AMERICA
 BEFORE THE
 COMMODITY FUTURES TRADING COMMISSION

CFTC Docket No. 80-R566-80-723

MORTGAGE SERVICES OF AMERICA,
 AND
 WILLIAM T. SCHOR COMPLAINANTS,
 v.

CONTICOMMODITY SERVICES, INC., AND
 RICHARD L. SANDOR, RESPONDENTS.

Washington D.C.
 March 16, 1981

The above-entitled matter convened in Hearing Room No. 540, 2120 L Street, Gelman Building, Washington, D.C. at 1 o'clock on Monday, March 16, 1981

BEFORE: GEORGE H. PAINTER, Administrative Law Judge

APPEARANCES:

ON BEHALF OF THE COMPLAINANTS:

LESLIE J. CARSON, JR., Esquire
 1004 Robinson Building
 42 South 15th Street
 Philadelphia, Pennsylvania 19102

ON BEHALF OF THE RESPONDENTS:

BY: ROBERT L. BYMAN, Esquire
 EUGENE R. WEDOFF, Esquire
 Jenner and Block
 One IBM Plaza
 Chicago, Illinois 60611

[192]

* * * * *

Q. If they had demanded that funding, and it had not appeared, and they had liquidated, what would have been the impact—well, first of all, when should they have demanded the funds to fully margin this account, given this long period of under-margining?

MR. BYMAN: Your Honor, I'm going to object to this question, unless there's a definition of what's standard and what should—

JUDGE PAINTER: The word "should," does bother me, Mr. Carson, because it implies perhaps a legal obligation to do something, and are you wanting Ms. Jordan to tell us that legally Conti should have enforced its demand? Are you trying to prove here that there was a violation of the Act by permitting those accounts to become under-margined to any extent?

MR. CARSON: Not to any extent, but to the extent that it was under-margined here.

JUDGE PAINTER: And this is a violation of the Commodity Exchange Act? Is it your contention that permitting an account to become—

MR. CARSON: Yes, Your Honor.

MR. BYMAN: I will tell Your Honor that there is no such requirement under the Act and the question is therefore improper.

JUDGE PAINTER: I am unaware of any such requirement. [193] Most lawyers know more than I do, and I am willing to learn.

MR. CARSON: Well, if I may just continue.

JUDGE PAINTER: When you use the word "should," are you suggesting then that you want a legal response?

MR. CARSON: No, Your Honor. I want a response with respect to the practice in the industry.

JUDGE PAINTER: Good business judgment on the part of the industry.

MR. CARSON: Good business judgment.

JUDGE PAINTER: All right, Ms. Jordan.

THE WITNESS: The question is when would good industry practice—

BY MR. CARSON:

Q. Let me ask it. When would good industry practice and good business judgment have militated towards Conti demanding that the margin deficit be eliminated or the account be liquidated, in the period starting September 14, 1979 to the end of the account?

A. Okay. For Conti to liquidate a customer's account, they should first inquire if the customer intends to send money, if they have faith in the customer being good for his word. I believe that Conti is fair in continuing to allow it to remain like that, being reasonable that the money is coming.

That did happen on 9/20, so I would eliminate any-[194] thing before 9/20, because he must have told them before 9/20 I'm sending money, the money came, Mr. Schor is good for his word.

The account didn't start getting significantly under-margined again until 9/26, and then it was largely under-margined on 9/27 and it never recovered. So, I would say five days from that point in time.

* * * * *

[342] MR. WEDOFF: Yes, Your Honor, and these decisions as I read them talk about the award of attorney fees as an incident to the litigation, and what we are claiming here is a right to attorney fees based on our customer agreement and contractual right.

The Commission based its decision on the United States Supreme Court decision and the Aleuska case, and talked about the ordinary American rule that attorney fees be not

awarded as an instance [*sic*] of litigation. But the Aleuska case and the general American rule recognizes that if parties contract to pay attorney fees as an incident of their doing business, that a court can award attorney fees.

Now, in this situation, we're not claiming an award based on a violation of the Commodity Exchange Act —

JUDGE PAINTER: Is there any counterclaim based on the violation of the Commodity Exchange Act?

MR. WEDOFF: No, our counterclaim is based simply on [343] a contractual right and the Commodity Exchange Act in reparation proceedings, as I understand it, Your Honor, allows us to bring as a counterclaim any claim that we have arising out of the factual matters that were raised in the Complaint.

And that's what we've done here. We're not claiming that Mr. Schor violated the Commodity Exchange Act. We're simply finding that he owes us a deficit arising out of the circumstances that he brought up.

And in connection with that deficit, which is a contractual claim on our part, we're making additional contractual claims that he is obligated to pay us the attorney fees that were connected with our collecting the deficit.

MR. BYMAN: May I suggest, Your Honor, that perhaps it should be a matter for our briefs to address as to whether we're entitled to it; we're simply asking for leave to file with our briefs an affidavit so that if your Honor finds that we're entitled to it; we'll have some measure by which to gauge our rights to those fees.

JUDGE PAINTER: You may attach it to your post-hearing briefs, but it is most unlikely that I would award attorney fees.

MR. BYMAN: We'll attempt to convince you otherwise in our brief.

* * * * *

CFTC Regulation 12.24, 17 C.F.R. 12.24 (1980), provided:

Reply.

If the answer asserts a counterclaim, the complainant shall file a reply to the counterclaim with the Commission within thirty (30) days after service of the answer. The reply shall be strictly confined to the matters alleged in the counterclaim, and shall in all respects conform to the requirements set forth in § 12.23(b) with respect to the form and content and other requirements concerning an answer. A complainant may satisfy a counterclaim, as if it were a complaint, in the manner set forth in § 12.23(a).

CFTC Regulation 12.26(a), 17 C.F.R. 12.26(a) (1980), provided:

Effect of failure to file answer or reply; default.

(a) *Findings and conclusions.* Failure timely to file an answer to a complaint or a reply to a counterclaim shall be treated as an admission of the allegations of the complaint or counterclaim, shall constitute a waiver of hearing on the facts set forth in the complaint or counterclaim, and shall result in the institution of a formal adjudicatory proceeding in accordance with § 12.31 upon the payment of the appropriate filing fee set forth in § 12.27 by either the complainant or registrant. The previously forwarded complaint, and the answer if no reply has been filed to a counterclaim set forth in the answer, shall be deemed to have been served for purposes of the institution of a formal adjudicatory proceeding. The proceeding shall be docketed in accordance with § 12.41 and a Presiding Officer shall be appointed in accordance with § 12.42. The Presiding Officer may thereafter, upon the motion of complaining party, enter findings and conclusions concerning the questions of violation and damages and may enter an

appropriate reparation award. If the facts which are treated as admitted are considered insufficient to support the amount of reparations sought, the proceeding may continue on the question of damages only.

Supreme Court of the United States

No. 85-621

COMMODITY FUTURES TRADING COMMISSION, PETITIONER

v.

WILLIAM T. SCHOR, ET AL.

ORDER ALLOWING CERTIORARI. FILED DECEMBER 9, 1985.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

Supreme Court of the United States

No. 85-642

COMMODITY SERVICES, INC., PETITIONER

v.

WILLIAM T. SCHOR AND MORTGAGE SERVICES OF AMERICA

ORDER ALLOWING CERTIORARI. FILED DECEMBER 9, 1985.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.